STATE OF MICHIGAN

COURT OF APPEALS

SOVEREIGN PROPERTIES, LLC, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED May 31, 2005
v	No. 260322 Monroe Circuit Court
BERNARD BENETEAU, MARY GAYLE BENETEAU, and BRIAN BENETEAU, Defendants/Counter-Plaintiffs-Appellants.	LC No. 02-014839-CH

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition, denying their motion for summary disposition, and quieting title to certain property in plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owns a three-story building known as 23-25 East Front Street in Monroe, Michigan. Defendants own a two-story building known as 27 East Front Street. Defendants' building is located immediately to the east of plaintiff's building. The buildings share a common wall. A staircase in plaintiff's building allows access to the second floors of both buildings.

Plaintiff received title to its building in 1998 by way of a quitclaim deed. A 1987 warranty deed in plaintiff's chain of title contained a caveat that it was subject to "all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining." A 1946 deed in plaintiff's chain of title is the first document to describe the property transferred in metes and bounds rather than by reference to monuments. An agreement reached in 1898 made between Edward Lauer, plaintiff's predecessor in interest, and Sophia and Emily Lewis, defendants' predecessors in interest, provided that the Lewises granted to Lauer the right to

construct a third story on his building in return for the Lewises' right to use the staircase to access a third story on their building if a third story was constructed.[1]

Defendants received title to their building in 2001 by way of a warranty deed from James Rostash and Linda Rostash. This deed purported to grant the property "together with rights and interest in a joint stairway" as shown in a 1942 quitclaim deed. The Rostashes received title to the property in 1990 by way of a warranty deed from Jessie Gentil. Jessie Gentil and Paul Gentil received title to the property in 1942 by way of a quitclaim deed from Alice Ready. That deed purported to reserve to Ready the use of one-half of the staircase.

The current dispute arose after defendants acquired title to their building and demanded use of the street-level entrance and the staircase. Plaintiff disputed defendants' right to use the staircase; plaintiff filed suit seeking to quiet title to the staircase and to preclude defendants from using the staircase. Plaintiff also sought damages for various actions taken by defendant.

Defendants filed a countercomplaint, asserting that they and their predecessors in interest had used the staircase to gain access to the second floor of the building and that they had acquired an interest in the staircase based on the doctrine of acquiescence[2] or adverse possession, or by way of an easement by necessity because the staircase was the only means by which they could gain access to the second floor of their building.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that defendants could not establish any title, right, easement, or any other interest in the staircase by reason of adverse possession, acquiescence, or easement by necessity. Plaintiff maintained that its tenants and predecessors in interest used the staircase consistently and continuously and always secured the door with a lock, and plaintiff contended that the 1898 agreement was irrelevant to the current dispute because, while it granted defendants' predecessors in interest the right to use the staircase from the second floor to the third floor if a third floor was added to the building, it did not convey any interest in the entranceway or the staircase to the second floor to defendants' predecessors in interest. Plaintiff also argued that it had acquired ownership of the entire staircase by way of adverse possession or acquiescence.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that the grant of use in the 1898 agreement created an easement appurtenant in their property. In the alternative, they asserted that they had acquired title to the staircase by way of acquiescence or adverse possession based on their use of the staircase and use by their predecessors in interest or that they had established the existence of an easement by necessity because the staircase offered the only access to their second floor.

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[1] No third story was ever constructed on the building now owned by defendants.

[2] Defendants asserted that their predecessors in interest first received permission to use the staircase by way of the agreement executed in 1898.

The trial court granted plaintiff's motion for summary disposition and denied defendants' motion. The trial court rejected defendants' assertion that they acquired title to the staircase by way of adverse possession. Although the statements in an affidavit submitted by James Rostash in support of defendants' motion indicated that the staircase was used continuously for a period in excess of fifteen years, those statements did not contradict David Sutton's affidavit, which asserted that use of the staircase by defendants' predecessors in interest was permissive. The trial court rejected defendants' assertion that they acquired title to the staircase by way of acquiescence, finding that no evidence showed that the parties were mistaken about the true location of the boundary. The trial court rejected defendants' assertion that they acquired an interest in the staircase by way of an easement appurtenant or an easement by necessity, noting that the 1898 agreement did not address the use of the staircase from the street-level entrance to the second floor and noting that no evidence showed that an easement was strictly or reasonably necessary. The trial court rejected plaintiff's assertion that it acquired title to the entire staircase by adverse possession, but concluded that plaintiff acquired title by way of acquiescence.

Defendants moved for reconsideration, arguing, inter alia, that the trial court erred by relying on an affidavit from Sutton in support of plaintiff's motion for summary disposition. The trial court denied the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). Because an action to quiet title is equitable in nature, we review the trial court's findings of fact for clear error and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

"An easement is the right to use the land of another for a specified purpose." *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). An easement does not displace the general possession of the land by its owner, and it grants the easement holder qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement. *Id*. "'[A]n easement may be created by express grant, by reservation or exception, or by covenant or agreement.'" *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002), quoting *Michigan State Hwy Comm v Canvasser Brothers Building Co*, 61 Mich App 176, 181; 232 NW2d 351 (1975). An easement appurtenant attaches to the land, and cannot exist separate and apart from the land to which it is annexed. *Schadewald*, *supra* at 35-36. The land served or benefited by an easement appurtenant is called the dominant tenement, and the land burdened by an easement appurtenant is called the servient tenement. *Id*. at 36. An easement by necessity may be created by operation of law, and may be implied where, after property is split into separate parcels, one parcel is landlocked. *Chapdelaine v Sochocki*, 247 Mich App 167, 172; 635 NW2d 339 (2001). A party asserting a right to such an easement need show only that it is reasonably necessary, not that it is strictly necessary. *Id*. at 173. "An easement by prescription results from the use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000). Permissive use of another's property does not create an easement by prescription. *Id*.

Title to property can be obtained through acquiescence by: "(1) acquiescence for the statutory period [of fifteen years], (2) acquiescence following a dispute and agreement, [or] (3) acquiescence arising from intention to deed to a marked boundary." *Walters v Snyder*, 239 Mich

App 453, 457; 608 NW2d 97 (2000). A claim of acquiescence to a boundary line for the fifteen-year statutory period, MCL 600.5801(4), requires a showing by a preponderance of the evidence that the parties acquiesced in the line and treated it as the true boundary for the statutory period, regardless of whether there was a bona fide controversy regarding the location of the boundary. *Walters*, *supra* at 456; *Killips*, *supra* at 260. A party seeking to establish a property boundary by acquiescence may tack the acquiescence of predecessors in title in order to demonstrate acquiescence for the statutory period. *Killips*, *supra* at 260.

To establish adverse possession, a claimant must show that his possession has been "actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); MCL 600.5801(4). The doctrine of adverse possession is strictly construed, and a party claiming title by adverse possession must establish the claim by "clear and positive proof." *Strong v Detroit & Mackinac Ry Co*, 167 Mich App 562, 568-569; 423 NW2d 266 (1988). This level of proof is much like clear and convincing evidence. *McQueen v Black*, 168 Mich App 641, 645 n 2; 425 NW2d 203 (1988).

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition because a genuine issue of fact existed about whether the 1898 agreement created an easement appurtenant to their property that allows them to use the staircase. We disagree. The grant of use in the 1898 agreement meets the definition of an easement appurtenant, *Schadewald*, *supra*, but is irrelevant to the issues raised by the instant case because it makes no reference whatsoever to any permitted use of the staircase between the street and the second floor. Cf. *Walz v Walz*, 101 Mich 167, 168; 59 NW 431 (1894) (granting an easement appurtenant for the use of a stairway because the easement agreement explicitly stated that the "'front stairs'" from the first to the second floor could be used by the complainant). The trial court did not clearly err in concluding that no issue of fact existed about whether defendants had an easement appurtenant that allowed them to use the staircase. *Killips*, *supra* at 258; *Rossow*, *supra*.

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition because a genuine issue of fact existed about whether they acquired title to a portion of the staircase by acquiescence. We disagree. The doctrine of acquiescence applies when parties acquiesced in a boundary line and treated it as the true line, regardless of whether a controversy existed regarding the actual location of the boundary line. *Walters*, *supra*. Defendants have not demonstrated that their predecessors in interest and plaintiff's predecessors in interest acquiesced to any boundary line. Rather, the evidence showed only that plaintiff's predecessors in interest granted permission for defendants' predecessors in interest to use the staircase from time to time. No evidence raised a question of fact about whether defendants' predecessors in interest believed they owned a portion of the staircase. The trial court did not clearly err in concluding that no issue of fact existed about whether defendants acquired title to a portion of the staircase by acquiescence. *Killips*, *supra*; *Walters*, *supra*.

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition because a genuine issue of fact existed about whether they gained title to the staircase by adverse possession or acquired a prescriptive easement in a portion of the staircase. We disagree. To gain title to or an interest in property by way of adverse possession or prescriptive easement, a party's use of the property must be exclusive and hostile to the interests of the

owner. *West Michigan Dock*, *supra*; *Prose*, *supra*. The statement in the 1942 deed did not demonstrate that any use of the staircase by defendants' predecessors in interest was without permission from plaintiff's predecessors in interest. Similarly, the affidavit submitted by Rostash did not indicate that defendants' predecessors in interest used the staircase exclusively or without permission granted by plaintiff or plaintiff's predecessors in interest. The statements made by Rostash did not contradict the statements made by Sutton. No evidence created a question of fact about whether use of the staircase by defendants and their predecessors in interest was either exclusive or hostile to the interests of plaintiff and its predecessors in interest. Defendants did not establish by clear and cogent evidence that they had a claim of title to the staircase by adverse possession, *Strong*, *supra*, and they did not show that a question of fact existed regarding whether they had an easement by prescription. *Prose*, *supra*.

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition because a genuine issue of fact existed about whether they had an easement by necessity. We disagree. A division of property did not result in defendants' predecessors in interest becoming "landlocked." The staircase was built entirely within the structure that is plaintiff's building. Furthermore, the undisputed evidence showed that when defendants acquired title to their building, it was essentially a shell. Defendants did not demonstrate that they would be unable to construct a staircase entirely within their building that would grant them access to the second floor. The trial court did not err in finding that a question of fact did not exist regarding whether an easement was reasonably necessary. *Chapdelaine*, *supra*.

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition because a genuine issue of fact existed about whether the change in deed language from monument descriptions to metes and bounds descriptions unintentionally and improperly placed the boundary between the buildings at a point on the staircase. We disagree. The parties did not dispute that the easternmost six inches of the staircase actually rested on defendants' side of the property line; therefore, no issue of fact existed for a jury to resolve. The change in deed language was not relevant to the trial court's decision regarding defendants' claims.

Finally, defendants argue that the trial court erred by concluding that plaintiff acquired title to the entire staircase by acquiescence. We disagree. The evidence showed that two-and-one-half feet of the staircase rested on plaintiff's side of the property line, while six inches of the staircase rested on defendants' side of the property line. However, the evidence also showed that for a period far in excess of fifteen years, plaintiff and its predecessors in interest granted defendants' predecessors in interest permission to use the entire stairway. The parties were mistaken about the location of the true boundary; nevertheless, and importantly, they adhered to the easternmost wall of plaintiff's property as the true boundary for the requisite statutory period. MCL 600.5801(4). The trial court did not clearly err in concluding that plaintiff gained title to the entire staircase by acquiescence. *Killips*, *supra*; *Walters*, *supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter